

**Senate Bill 1351 (Soto)**  
**Conflict: Post Employment Restrictions**  
**Version: Amended 4-16-04**  
**Status: Senate Appropriations**

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**Executive Summary**

This bill would prohibit former elected officials of city and county agencies from lobbying that agency for a period of one year after the official leaves office, extending the "Revolving Door" bans currently in effect for state officials.

**Recommendation**

The Chairman's Subcommittee on Legislation voted to oppose this bill in advance of its first policy committee hearing. Staff seeks ratification of that position. The Subcommittee analyzed the bill in consultation with staff, and concluded that the bill placed a significant "one-size-fits-all" regulatory burden on local governments without sufficient evidence of a need for the law. Additionally, they concluded that the budgetary burden it would impose on the FPPC would be impossible to meet. The Subcommittee made this recommendation to the Senate Elections and Reapportionment Committee hearing on May 21, 2004.

Out of a concern that the Legislature may approve the bill over the Subcommittee's concerns, staff recommends that the Commission additionally request that the bill be amended in order to make clear the types of post-governmental activities that would be banned and to eliminate unnecessary analysis by city and county officials.

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**Background**

Chapter 7 of the Political Reform Act ("the Act") regulates the broad area of "conflicts of interest." Included in Chapter 7 are various articles dealing with the general conflicts prohibition (Article 1), the disclosure requirements (Article 2), and the adoption of conflict-of-interest codes (Article 3). Article 4 addresses the concept known as "revolving door" prohibitions, and places restrictions on the activities of certain public officials who are leaving or have left public service.

The revolving door provisions of Section 87406 were added by Stats. 1990, Ch.84 (SB 1738) and were linked to the passage of Prop 112 (SCA 32). This proposition amended Articles III, IV, and V of the California Constitution and applied only to state officials.

**Existing Law and Regulations**

Section 87406 places post-employment restrictions on state officials. It currently restricts former state officials from lobbying their former agencies for a period of one year after leaving state agency service. Former state officials who are covered by the statute are specified as: Members of the Legislature; elected state officers; designated employees of a state administrative agency; officers, employees, or consultants of a state administrative agency who held a position which entailed the making, or participation in the making of decisions which may foreseeably have had

a material financial effect on any financial interest; and members of a state administrative agency.

Section 87406.1 places post-employment restrictions on former members of an air pollution control district or air quality management district, and former officers or employees of an air pollution control district or air quality management district who held a position which entailed the making, or participation in the making of decisions which may foreseeably have had a material financial effect on any financial interest, and was added by Stats. 1994, Ch. 747.

Section 87407 prohibits public officials, including from making, participating in making, or using his or her official position to influence any governmental decision directly relating to any person with whom he or she is negotiating or has any arrangement concerning prospective employment, and was added by Stats. 1990, Ch. 84.

Until recently, while other portions of the conflict laws, such as disclosure and the conflicts ban itself, were applicable to local public officials, the only local public officials subject to "revolving door" provisions were those air pollution control district or air quality management district officials subject to the post-employment provisions of 87406.1. This changed in 2003, when AB 1678 (Negrete McLeod) amended the language of § 87407 (Stats. 2003, Ch. 778) broadening to local officials the prohibitions against participation in decisions directly relating to a prospective employer. The bill did not, however, broaden the post-employment prohibitions of § 87406 to local officials.

### **Bill Analysis**

As drafted, the proposed one-year ban for elected city and county officials prohibits them from appearing before or communicating with their former agency to influence certain actions or proceedings, very closely mirroring the broad one-year ban for officials of a state administrative agency, as defined in section 87406(d).

The proposed one-year ban for local officials provides that:

- No former elected city or county official
- Who held a position with a local government agency (as defined in 82041)
- That entailed making or participating in decisions that might affect a financial interest
- Shall for one year after leaving that office or employment
- Act as agent or attorney for or otherwise represent for compensation any other person
- By making any formal or informal appearance before or any oral or written communication to
- That local government agency (or any committee, subcommittee, or present member, officer or employee of that agency)
- If the appearance or communication is for the purpose of influencing administrative or legislative action, or
- If the appearance or communication is for the purpose of influencing any action or proceeding involving the issuance, amendment, awarding or revocation of a permit,

license, grant, or contract, or the sale or purchase of goods or property.

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## **DISCUSSION AND POLICY CONSIDERATIONS**

### **Chairman's Subcommittee on Legislation Concerns**

#### **Is the Bill Necessary?**

The author's office reports that there are currently local jurisdictions where "revolving door" issues are of significant concern. The extent of the problem, however, is difficult to determine, since staff has received no documentation to support that assertion or to ascertain the nature of the issues they face. While the FPPC Enforcement Division has received some complaints alleging "revolving door" violations at the local level these complaints are too few to gauge the scope of the problem at that level.

Some local jurisdictions currently have "revolving door" laws that differ from the proposed PRA "revolving door" laws. Those local laws also differ from one another. A comparison of the ethics laws in San Francisco and Los Angeles illustrates that the two jurisdictions do not approach the "revolving door" issues in the same way (Attachment 2). For instance, the Los Angeles law imposes a one-year prohibition against direct communication with any agency by elected City officers, members of the City Ethics Commission, or other former "high level officials" under certain circumstances (Los Angeles Municipal Code section 49.5.11(D)). The San Francisco law imposes a similar one-year ban applicable to the Mayor and Members of the Board of Supervisors (San Francisco Campaign and Government Conduct Code Section 3.234(b)). In addition, San Francisco imposes a one-year ban applicable to all officers and employees, prohibiting them from contacting their former department (San Francisco Campaign and Government Conduct Code Section 3.234(a)(1)(A)).

The differences in these laws suggest that each jurisdiction has its own distinct issues that need to be addressed. For this reason, the Chairman's Subcommittee on Legislation questions whether the "one-size-fits-all" approach in the proposed bill is the best answer to resolving whatever issues the local jurisdictions may be facing.

The Subcommittee concluded that there is not sufficient evidence to support the need to regulate this issue in all local jurisdictions. The Subcommittee also concluded that city and county "revolving door" issues should be dealt with by local ordinance so that each can be tailored to fit the individual needs of each jurisdiction.

#### **Budgetary Concerns**

If enacted, this amendment would increase the workload for Commission staff. Technical Assistance Division anticipates that an additional Political Reform Consultant may be needed to handle the additional telephone and written advice workload. Legal Division estimates an increased workload that would require an additional .33 attorney position to handle the increased regulatory, advice and opinion workload. The Enforcement Division estimates that the increase in the Enforcement workload will mirror the roughly 3-to-1 ratio of local vs. state complaints in the conflict-of-interest arena. Estimated costs for the increased workload, calculated based on mid-range salaries with 28.8% benefits, are as follows:

• .33 Legal Counsel Position	\$33,000
• .5 Enforcement Counsel Position	\$50,000
• 1 Political Reform Consultant Position	\$75,000
• Clerical support	<u>\$10,000</u>

<b>Total Estimated Costs</b>	<b>\$ 168,000</b>
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Budget cuts over the last two years have substantially decreased Commission personnel to the point that it is barely able to keep up with the existing programs it must carry out. It will be very difficult for staff to implement any new mandates. Additionally, at its April 2004 meeting the Commission identified several mandates that it may ask the Legislature to suspend if proposed budget cuts are implemented for the 2004/05 fiscal year. Among those are the current “revolving door” statutes. This bill would add mandates to those statutes at a time when staff can barely meet its current statutory responsibilities and when the Commission faces additional proposed cuts.

The Legislative Subcommittee concluded that, without additional funding, staff cannot implement this bill without jeopardizing other mandated programs.

### **Additional Staff Concerns**

#### **What types of activities are prohibited?**

The bill uses the term “administrative or legislative action.” Both “administrative action” and “legislative action” are defined in the PRA, but only in the context of actions at the state level.

Government Code section 82002 defines “administrative action” as “...the proposal, drafting, development, consideration, amendment, enactment, or defeat by any state agency (*Emphasis added*) of any rule, regulation, or other action in any ratemaking proceeding or any quasi-legislative proceeding...”.

Government Code section 82037 defines “legislative action” as “...the drafting, introduction, consideration, modification, enactment or defeat of any bill, resolution, amendment, report, nomination or other matter by the Legislature or by either house or any committee, subcommittee, joint or select committee thereof, or by a member or employee of the Legislature acting in his official capacity (*Emphasis added*).”

Because the language of both sections clearly limits the bill’s scope, the term “administrative or legislative action” in the proposed language is left without meaning for city and county officials. The phrase should be defined in order to make clear what types of actions will be affected by the prohibition.

#### **Does the bill require unnecessary analysis by local officials?**

The author's office intended to apply the prohibitions to higher level local officials only. As introduced, the language of the bill would have reached all local officials. The April 16, 2004, amendment narrowed the language to apply the prohibition only to "elected" city and county officials. However, it included additional clarifying language that appears unnecessary and may require that officials conduct unnecessary analysis.

The bill defines the duties elected officials must perform in order for the post-employment rule to apply to them as duties "...that entailed the making, or participation in the making, of decisions which may foreseeably have a material effect on any financial interest..." Since it is likely that all elected city and county officials make or participate in governmental decisions, the language seems unnecessary. In fact, the language could be construed to require officials to conduct case-by-case analyses to determine whether the official made or participated in governmental decisions.

Staff recommends deletion of the language "..., that entailed the making, or participation in the making, of decisions which may foreseeably have a material effect on any financial interest...".

Attachments:

- Attachment 1. Chairman's Subcommittee on Legislation's letter of opposition.
- Attachment 2. Los Angeles Municipal Code section 49.5.11(D). San Francisco Campaign and Government Conduct Code Section 3.234(b).